**Stockton Steel Fabricators, Inc., a Division of The Herrick Corporation *and* General Teamsters Local No. 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.** Case 32-CA-4732

31 July 1984

## DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

On 16 August 1983 Administrative Law Judge Joan Wieder issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

The judge found, inter alia, that the Respondent violated Section 8(a)(5) of the Act by withdrawing recognition from the Teamsters and thereafter refusing to bargain with the Teamsters about terms and conditions of employment of unit members. We fully agree with the judge's reasoning and her conclusions that the Teamsters represented forklift operators at the Respondent's facility, and that the Respondent unlawfully refused to bargain with the Teamsters concerning the forklift operators.

Our dissenting colleague overlooks several facts that refute his argument that the Union waived its right to bargain in this proceeding. The Respondent steadfastly refused to acknowledge in the first instance that the Teamsters represented forklift operators. The Respondent's response to the Teamsters request to investigate the matter was an unequivocal rejection of the Teamsters representational rights. The record indicates that, even during the Respondent's alleged conversations with the Teamsters in April and May 1982, the Respondent was not going to bargain about a forklift unit, only about the effects of the closing of the trucking operations. That the Respondent notified the Teamsters of its plan to close its trucking operations 3 months before it did so has no bearing on the instant 8(a)(5) charges as the closing of its trucking operations did not give the Respondent cause to terminate its bargaining relationship with the Teamsters with respect to the Teamsters-represented forklift operators, who remained, as before, in its employ. The evidence fully supports the judge's finding that the Teamsters contract covered these forklift operators. The Respondent's paying them the wage scale set forth in that contract as much as concedes that fact. Further, despite the Respondent's asserted willingness to meet with the Teamsters in April and May, the Respondent had by then withdrawn recognition from the Teamsters as the collective-bargaining representative of any forklift operators. In this regard, the Respondent's president had already directed the affected employees to join the Ironworkers under pain of discharge. The Respondent's subsequent offers to meet with the Teamsters, therefore, were without effect as to the continued representation of the forklift operators. Indeed, the Respondent's 10 May 1982 letter is totally devoid of any reference to the matter of the Teamsters forklift operator unit. Its stated willingness to talk with the Teamsters was limited to a willingness to discuss the closing of its trucking operations.

On these facts and the facts set forth by the judge, we cannot but conclude that the Respondent rendered attempts at bargaining about the forklift operator unit futile. The Respondent maintained

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[1] At fn. 6 of her decision, the judge found that the Respondent's president Juano admitted that Teamsters-represented employees had to join the Ironworkers in 3 days or they would be terminated. Juano testified that he told employees they had 31 days to join the Ironworkers or they would be terminated in 3 days. Despite this apparent error, we find no basis for disturbing the judge's credibility resolution concerning this incident.

The Respondent excepts to the judge's finding that Juano told employees he did not intend to renew the Teamsters contract. Employee Hogue testified at the hearing that Juano made such a statement. However, Hogue also testified that his affidavit, which indicated that Juano said he was "considering" not renewing the contract, was "how it came across to me." But, Juano testified that as of the 1 April meeting he was not going to renew the Teamsters contract.

[2] The judge found that the Respondent withdrew recognition from the Teamsters in January 1982, and concluded that, by that act as well as by its subsequent refusal to bargain, the Respondent had violated Sec. 8(a)(5) and (1) of the Act. The charge in this case was filed 2 August 1982. Consistent with this charge and the dictates of Sec. 10(b) of the Act, the complaint alleged that the Respondent unlawfully withdrew recognition 1 April 1982. The judge's finding is contrary to both the complaint allegations and statutory prohibitions. Accordingly, we correct her findings and conclusions. We find that the Respondent violated the Act in this regard as of 1 April 1982.

To the extent the judge's conclusions indicate that a union must actually engage in conduct violative of Sec. 8(b)(4)(D) of the Act in order that 10(k) proceedings can be invoked, we disavow reliance on them. See, e.g., *Cornell-Leach, Gibson Project*, 212 NLRB 495 (1974). However, we agree with the judge's conclusion that there is no jurisdictional dispute here which precludes 8(a) proceedings. See, e.g., *Sullivan Transfer Co.*, 247 NLRB 772 (1980); *Sheet Metal Workers Local 418 (Young Plumbing)*, 227 NLRB 300 (1976); *Metromedia, Inc.-KMBC-TV*, 232 NLRB 486 (1977).

Member Dennis agrees that the circumstances of this case do not present a traditional jurisdictional dispute. Rather, as a consequence of its decision to terminate its trucking operations, the Respondent decided that it wanted only one union to represent forklift operators. Member Dennis finds it unnecessary to pass on *Cornell-Leach, Gibson Project*, supra, and related cases.

Member Dennis notes that the judge cited *Los Angeles Marine Hardware Co.*, 235 NLRB 720 (1978), in her discussion of the Respondent's bargaining obligation. Although *Milwaukee Spring*, 268 NLRB 601 (1984), reversed *Los Angeles Marine*, Member Dennis does not believe this affects the judge's conclusions.

there was no such unit. It thus denied the basic premise for bargaining, it reiterated its conclusions on the matter to the Teamsters, and it maintained that position throughout its contact with the Teamsters. We thus affirm the judge's conclusion that the Respondent violated the Act by refusing to bargain with the Teamsters.

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Stockton Steel Fabricators, Inc., a Division of The Herrick Corporation, Stockton, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

MEMBER HUNTER, dissenting.

Contrary to my colleagues, I would not find that the Respondent failed to bargain with the Teamsters about terms and conditions of employment of three employees. Rather, I find that the Teamsters waived its right to bargain over these matters.

The Respondent and the Teamsters were parties to a collective-bargaining agreement effective 1 April 1979 to 31 March 1982.[1] In October 1981 the Teamsters notified the Respondent of its intent to modify the contract, and issued an invitation to bargain. By letter dated 25 January, the Respondent, by its attorney LeBeouf, wrote the Teamsters that it desired to cancel and terminate the contract because trucking operations, whose employees the Teamsters represented, would be discontinued in April.

It was not until 17 March that the Teamsters met with LeBeouf. At that time, the Respondent repeated that the trucking operations were being discontinued. The Teamsters did not question LeBeouf concerning the decision to close that operation or its effect on employees. However, the Teamsters asked LeBeouf about forklift operators it claimed to represent. LeBeouf denied there was an appropriate Teamsters forklift operator unit, and asserted that teamsters operated forklifts only by the courtesy of the Ironworkers.[2]

LeBeouf subsequently investigated the Teamsters claim. On 22 March he wrote Teamsters attorney Macey that in the Respondent's opinion the Teamsters only represented truckdrivers, and that forklifts were operated by Teamsters-represented employees through Ironworkers largesse. LeBeouf indicated that the Ironworkers would no longer extend the courtesy. The letter closed by inviting contact if the Teamsters had any further questions.

Macey answered LeBeouf's letter 5 April by indicating that the Teamsters had "no alternative except to file an unfair labor practice" charge against the Respondent.[3] On 6 April, LeBeouf called Macey and stated he was willing to meet with the Teamsters and to discuss both the decision to close trucking operations and the issue of the forklift drivers. Macey said he would arrange a later date to meet with Teamsters officials, who were then out of town. LeBeouf called Macey again 3 May, and Macey again stated he would arrange a meeting. Having not heard from Macey,[4] LeBeouf wrote him 10 May requesting that the parties "meet and confer." The letter mentioned that LeBeouf had not heard from Macey for a week, and that, if he did not hear from him in 5 days, he would assume that the Teamsters did not desire to bargain. LeBeouf received no response from the Teamsters.

Also during April, Respondent President Juano and the three forklift operators met to discuss their mutual problems. The employees were told by their Teamsters representative to attempt to get the contract renewed. However, no Teamsters representative accompanied the employees. They presented a plan to Juano which included wage freezes and other benefit losses. Juano considered these requests, but ultimately turned them down. The three Teamsters finally joined the Ironworkers 5 June. Unfair labor practice charges were filed in August.

The foregoing facts demonstrate that the Respondent gave adequate notice of its planned closing of its trucking operations and its opinion that the closing would lead to the termination of the Teamsters bargaining unit. As early as January, 2 months before the end of the contract, the Respondent made its intention plain to the Teamsters. Again on 17 March, 22 March, 6 April, 3 May, and 10 May, the Respondent contacted or spoke with the Teamsters concerning this matter.[5] The Teamsters had only two responses to the Respondent's proposals: first, it questioned LeBeouf's knowledge of the facts; second, it filed an unfair labor practice charge against the Respondent.

[1] All dates are in 1982 unless otherwise indicated.

[2] The Ironworkers represented a unit of the Respondent's employees since 1965. Its contract included forklift operators.

[3] Although the Teamsters previously acquiesced to the Respondent's decision to terminate its trucking operations, Macey also sought at this time to bargain over that matter.

[4] The foregoing account of events is based on LeBeouf's uncontradicted testimony and documentary evidence supporting the testimony. The judge failed to mention or to discuss these matters in making her determinations.

[5] Macey's letter of 5 April requesting bargaining over the issue was in direct contrast to the Teamsters acquiescence at the 17 March meeting on the matter. Nonetheless, LeBeouf immediately offered again to bargain over the matter, but the Teamsters did not pursue his offer.

Under Board precedent, however, it was incumbent upon the Teamsters to request bargaining on the matter. *Citizens Bank of Willmar*, 245 NLRB 389 (1979). It is plain on the facts of this case that the Teamsters did not pursue bargaining over the forklift operators. Further, the Respondent did not render such bargaining futile by presenting the matter as a fait accompli. The Respondent notified the Teamsters about the planned economic closing of the trucking operations a full 3 months before it was accomplished. The Teamsters never protested that closing. The Respondent also remained open to a Teamsters reply to its contentions. Its letters to the Teamsters spoke of its "desire" to cancel the contract; an "invitation" was extended to meet on the matter; management's "position" was that the truck closing ended the Teamsters relationship. These are not the entreaties of a party with a closed mind.

In sum, the Respondent complied with the Act's requirements under Section 8(d) and Section 8(a)(5). The Teamsters conduct in support of its claims was inadequate—it simply did not pursue the matter except to announce its intention to file charges. Its mere protests are insufficient to support a refusal-to-bargain finding. Accordingly, I dissent.[6]

[6] I would also dismiss the 8(a)(3) allegation in this case. Since the Teamsters waived their right to bargain, the Respondent was free to deal with the forklift operators as it desired. Since the Ironworkers contract included the forklift operator classification, the Respondent was privileged to transfer the work done by the Teamsters to the Ironworkers.

## DECISION

### STATEMENT OF THE CASE

JOAN WIEDER, Administrative Law Judge. This case was tried at Oakland, California, on March 16, 1983.[1] The charge was filed on August 2 by General Teamsters Local No. 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the Union or Teamsters). A complaint was issued on September 30, and an amended complaint[2] and notice of hearing was issued on February 10, 1983. The complaint alleges that Stockton Steel Fabricators, Inc., a Division of the Herrick Corporation (the Company or Respondent):

1. About April 1, withdrew recognition of the Union and, since that date, has failed and refused, and continues to fail and refuse, to recognize and bargain with the Union as the exclusive bargaining representative of the employees in the Teamsters Union.

2. Since about May 2, Respondent has discriminated against the union members Noel Hogue, Donald Bourquin, and Owen Gunkel by, inter alia:

(a) Removing them from the Teamsters unit and placing them in the Western Steel Council and Shopmen's Local Union No. 290, International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO unit (Ironworkers) which resulted, inter alia, in said employees' loss of seniority, pension, and health and welfare benefits, and a reduction in pay.

(b) Requiring their membership in the Ironworkers as a condition of continued employment with Respondent.

(c) Placing them on layoff beginning about January 7, 1983, as a direct result of Respondent's unlawful conduct alleged above in subparagraphs 11(a) and 11(b), including, but not limited to, said employees' loss of seniority in violation of Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Respondent denies that the withdrawal of recognition and the layoffs were unlawful or that it in any way violated the Act.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs were timely filed and have been carefully considered.

On the entire record, including especially my observation of the witnesses and their demeanor, I make the following

### FINDINGS OF FACT

#### I. RESPONDENT'S BUSINESS

Respondent admits that it is a California corporation engaged in the nonretail fabrication and erection of structural steel and having an office and place of business located in Stockton, California. It further admits that during the past 12 months, in the course and conduct of its business, it has purchased and received goods and materials valued in excess of $50,000 directly from suppliers located outside the State of California. Accordingly, it admits, and I find, that it is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

#### II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that the Teamsters and the Ironworkers are labor organizations within the meaning of Section 2(5) of the Act.

#### III. THE ALLEGED UNFAIR LABOR PRACTICES

##### A. *Background*

Most of the facts are undisputed. Respondent was formed in 1965 and is engaged in the fabrication and sale of steel products. Tom Juano is the president of Stockton Steel. Also in 1965, the Company recognized the International Association of Bridge, Structural and Ornamental Ironworkers Local 790, AFL-CIO, which represented a unit of its employees. The unit is described in the contract. See Appendix A.

In 1969, Respondent initiated trucking operations and voluntarily recognized the Teamsters by signing a letter or "me-too" agreement. The last such agreement stated: "By our signature hereto, we acknowledge our commit-

[1] All dates herein are in 1982 unless otherwise indicated.

[2] The complaint was further amended at the trial.

ment to execute the NATIONAL MASTER FREIGHT AGREEMENT."[3]

Article 3 of the agreement provides for employer recognition and acknowledgment of all employees in the classifications noted in the Master Agreement and certain supplements thereto including the Western Area Pick-Up and Delivery Local Cartage and Dock Workers Supplemental Agreements. This agreement, for the period April 1, 1979, to March 31, 1982, includes within its coverage forklift operators.[4] It is uncontroverted that those employees who worked for Respondent as forklift operators and were members of the Teamsters were paid the wage scale specified in Appendix A herein, which was different than the wages paid employees who were performing over-the-road or other duties or were members of the Ironworkers had as many as 16 to 18 forklift operators. The Ironworkers' collective-bargaining agreement specifically includes forklift operators in the unit description. The record does not indicate how many ironworkers were historically employed as forklift operators. Thus, Respondent had two units performing forklift truck operations represented by different unions, Teamsters, and Ironworkers.

One of the members of the Teamsters unit, who was also the union steward, Noel L. Hogue, testified without controversion that he began working for the Company in 1971 as a truckdriver. Several months later he was asked by Paul Long[5] to assume the permanent duties of a forklift driver. The Teamsters drove both trucks and forklifts. Respondent, in 1979, submitted to the Teamsters a seniority list classifying Hogue and Bourquin as lift truck operators.

In 1979, a senior executive, Fred Long, left Respondent and started his own company, Western States Steel. About one-half of Respondent's employees went with the new company. Hogue told Juano that he wanted to stay with the Company and asked to be assigned as a truckdriver. Juano told him he provided a greater benefit to the Company by remaining a forklift driver. After Fred Long established Western States Steel, Teamsters who left the Company were not replaced. Hogue worked as both a foreman and forklift driver for most of the years he was employed by the Company. Hogue was paid in accordance with the Teamsters' forklift drivers' scale which was 50 cents an hour more than truckdrivers and varying amounts more than Ironworker forklift drivers. Immediately after Western States Steel was formed, the Company still employed five Teamster members. These employees were truckdrivers and/or forklift drivers and mechanics. Prior to that time, there were six or seven Teamsters who were forklift drivers at the Company.

According to Hogue's undisputed testimony, the Teamsters represented all the yard employees. From 1971, when Hogue started working at Respondent, until 1973, he was the only forklift driver in the yard. The Company moved to a new facility in 1973, business expanded, and he was assisted from time to time by Ironworkers. Paul Long informed Hogue that Ironworkers who were assigned to work in the yard were "loaned" to the yard; they were not permanently assigned to that job. The Teamsters performed work inside the facility as well as in the yard. At some unspecified point in time, the Ironworkers objected to the Teamsters operating grinders and performing other ironwork but they continued operating forklifts inside the plant as well as in the yard.

It is also established that the Ironworkers had a longstanding objection to any teamster working as a forklift operator. Hogue and Robert Plummer, the principal officer and secretary-treasurer of the Teamsters, understood that there was a "gentlemen's agreement" with the Ironworkers and Company that, due to lack of work for ironworkers, the teamsters would let the ironworkers finish off their day's work by operating forklift trucks in the yard. As a quid pro quo, the teamsters would work inside the plant. This agreement was never reduced to writing. Lee Head, a business agent with the Ironworkers from 1979 to 1982, disclaims any knowledge of such an agreement and stated that his inquiries had failed to uncover the existence of such an understanding. Lawrence Elliot, a business agent with the Teamsters, corroborated Plummer's and Hogue's testimony regarding the understanding. Also, according to Elliot, either Juano or Long called him in the mid-1970's about a pending arbitration involving the discharge of an ironworker and his replacement by a teamster forklift operator. The ironworkers protested the forklift classification. Elliot does not know the results of the arbitration. Elliot's testimony.

In 1981, Head met with Elliot and Plummer to discuss which unit or units represented the forklift drivers. Head stated that he was not familiar with any agreement that permitted a division of the forklift operations between the two unions and he would not agree to or honor such an agreement. Head also told the Teamsters that he was not "interested in pushing the Teamsters out of there, but it is my position as a BA that when they left, they would be replaced by Ironworkers." This was the only discussion between the respective union representatives. Prior to this meeting, Head also told Juano that using employees who were members of the Teamsters to operate forklift trucks was a violation of the Ironworkers' contract. According to Head, Juano told him that there was a verbal agreement with the Ironworkers. This admission

[3] The full title of the agreement is: "National Master Freight Agreement Covering Over-The-Road and Local Cartage Employees of Private, Common, Contract and Local Cartage Carriers for the Period of April 1, 1979 to March 31, 1982." Pertinent portions of this agreement are set forth in App. A.

[4] See, for example, art. 40 of the agreement, which provides in part:

> Art. 40.—Scope of Agreement—Section 1.—Operations Covered
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> (a) The execution of this Agreement on the part of the Employer shall cover all truck drivers, helpers, dockmen, warehousemen, checkers, power-lift operators, hostlers, and such other employees as may be presently or hereafter represented by the Union, engaged in local pick-up, delivery and assembling of freight within the jurisdiction of a Local Union . . . .

App. A of this collective-bargaining agreement supplement sets forth wage rates for Northern California including wage rates for forklift operators and hostlers.

[5] Paul Long did not appear and testify. Respondent did not claim that Long was not a supervisor or agent of Respondent or was not acting in the course of his employment at the times here pertinent. Fred Long, in 1979, started his own steel-fabricating company, Western States Steel and took about half the employees with him. There was no showing of relationship between Paul and Fred Long.

by Head confirms the testimony of Hogue, Elliot, and Plummer and, contrary to Head's denial of any knowledge of a verbal agreement in 1981, demonstrates that he knew Juano understood there was such an agreement as of July 1979.

By 1980 the Teamster unit was reduced to three employees: Hogue, Bourquin, and Gunkel. Hogue and Bourquin were forklift drivers and Gunkel drove a truck. On March 31, Respondent ceased trucking operations and Gunkel became a yard maintenance man. The decision to cease trucking operations and whether there is a need to bargain about the implementation of his decision are not matters in issue in this case. The Company indicated to Hogue as early as 1980 that it wanted to terminate the trucking operations. Hogue testified that he understood from Paul Long that "he felt at that time in order to get rid of the trucks then he would have to get rid of the teamsters, all the teamsters." It is undisputed that the decision to terminate trucking operations was economically motivated.

### B. *Withdrawal of Recognition*

On October 2, 1981, the Teamsters wrote a letter to Respondent which was a notice of intent to modify the National Master Freight Agreement and supplements thereto as well as an invitation to negotiate. Respondent, on January 25, by its attorney David LeBeouf, gave notice of its intent to "cancel and terminate" the agreement pursuant to Section "8(d)(1)" of the National Labor Relations Act. The basis for this decision was given as follows:

> In April, 1982, Stockton Steel's trucking operation will be discontinued. Stockton Steel's future trucking needs shall henceforth be supplied by independent common carrier. It is management's position, therefore, that a renewal of the collective bargaining agreement will be an exercise in futility for the reason outlined above.

On March 17, after conclusion of the Teamsters national negotiating committee's efforts to negotiate terms of the Master Freight Agreement, LeBeouf met with the Union's negotiating committee. Prior to this meeting, Plummer contacted LeBeouf to arrange for negotiations. LeBeouf told Plummer there was no need to negotiate because the Company disposed of its trucks. Plummer asked about the forklift and water truck operations. LeBeouf responded that the Company no longer had any employees covered by the Teamsters contract. LeBeouf admitted that the Union asserted the unit included forklift truckdrivers. LeBeouf told Elliot that the only appropriate Teamsters unit was the over-the-road truckers and that teamsters operated forklifts only through the courtesy of the Ironworkers. The basis for the Teamsters' claim of representation of forklift drivers was not discussed. Plummer opined that LeBeouf did not really know there was an applicable collective-bargaining agreement. LeBeouf went to the meeting to bargain about the impact and implementation of the decision to terminate trucking operations. The Union did not consider that an issue and did not question the Company's decision to get rid of the trucks.

LeBeouf investigated the assertion that the Teamsters unit included forklift truckdrivers and, on March 22, wrote the Union's attorney Richard Macey the following missive:

> I have reviewed our discussions of Wednesday, March 17, 1982, with Tom Juano, Division President of Stockton Steel.
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> Please be advised that there exists no record nor evidence of an oral understanding that the Teamsters had or have jurisdiction over forklift operators working outside the plant at Stockton Steel. In fact, all forklift operators at Stockton Steel work outside of the plant. Therefore, your characterization of inside/outside jurisdiction is erroneous and unfounded.
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> Secondly, the Teamsters have never had jurisdiction over *any* forklift operators at Stockton Steel. The bargaining unit was and is comprised solely of truck drivers. Due to the gradual cessation of trucking operations at Stockton Steel, two truck drivers, Noel Hogue and Donald Bourquin, through the courtesy of Local 790, were allowed to drive forklifts. I emphasize that these two employees were spared the ranks of the unemployed through the empathy of Local 790.
>
> Local 790 has advised Stockton Steel that upon the latter's complete cessation of trucking operations, the three concerned employees will no longer be granted the courtesy previously extended. If you have any questions concerning Local 790's jurisdictional rights, I suggest that you contact their officials.
>
> Finally, I remind you that the provisions of the National Labor Relations Act, Section 8(b)(4)(ii)(D) state:
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> > It shall be an unfair labor practice for a labor organization or its agents, to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is, forcing or requiring any employer to assign particular work to employees in a particular labor organization, or in a particular trade, craft, or class, rather than to employees in another labor organization, or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the board determining the bargaining representative for employees performing such work.
>
> Should you have further questions regarding this matter, please do not hesitate to call.

Macey replied to this letter on April 5, as here, pertinent, as follows:

> I am in receipt of your letter of March 22, 1982 concerning the alleged jurisdictional problem. Since it is the Teamsters' position that the employees per-

> forming fork lift operations outside the plant are within the jurisdiction of the Teamsters we will have no alternative except to file an unfair labor practice against your company.

Macey also sought, at this time, to bargain about the cessation of the trucking operation. LeBeouf replied to the April 5 letter on May 10, again expressing Respondent's willingness to discuss the decision to discontinue its trucking operation. The question of forklift drivers as part of the Teamsters unit was not mentioned. LeBeouf also noted that the Teamsters were unavailable for a while and asked to be informed when they could meet. He had not heard from the Teamsters, so he noted that "I will construe your silence to mean that the Teamsters do not desire to meet and confer on this matter."

Also in April, after consulting with Elliot, Juano met with Hogue, Gunkel, and Bourquin to discuss their future with the Company. The employees understood they spoke only for themselves, not the Union. Juano started the conversation by informing the employees that the Company did not intend to renew the Teamsters contract. Hogue told Juano he wanted to remain a teamster because he had been a member for 16 years and the Union had a good retirement plan. Gunkel had been a teamster for more than 20 years. These employees offered several concessions, including wage freezes and foregoing other benefits if they could remain teamsters. The offer would make their benefits comparable to those of the Ironworkers. Juano told them he would take their proposals "under advisement."

Toward the end of April, Juano informed Hogue that the Company was not going to renew the contract, the employees' proposal was "turned down . . . and that we would have to join the Ironworkers and, after considerable discussion back and forth between the two of us, he finally made the statement of either you be in the Ironworkers by May the 3rd or you're going to be fired the day after."[6] Hogue informed Elliot of Juano's decision. Elliot told Hogue to do whatever was necessary to retain his job and await resolution of the unfair labor practice charge.

The Teamsters employees made several attempts to join the Ironworkers. After the first such attempt, according to Hogue's unrefutted testimony, Hogue was told by the Ironworkers steward Toffenelli that Toffenelli was instructed to inform the three Teamsters "that the Ironworkers would not and could not sign us up and I asked him why and he said well, we don't want to be sued by the Teamsters, if we sign you up, we'll get sued by the Teamsters."

About June 1, Gunkel found out that the Company had not been paying the Teamsters health and welfare benefits after April 1.[7] The Teamsters employees then contacted Toffenelli, stated they were not receiving benefits other than wages and needed some kind of representation to get health and welfare and retirement benefits. On June 5, the Teamsters, employees met with Head who told them they could keep their seniority for vacation purposes but would have to conform to the Ironworkers contract with regard to the other benefits and would have to go to the bottom of the employee seniority list. If the Teamsters did not join the Ironworkers under those terms, they would lose their jobs. They joined the Ironworkers that day.

In December 1982 and January 1983, Respondent laid off several employees due to lack of work. Because they were placed on the bottom of the seniority list, Bourquin and Gunkel were laid off before Christmas and Hogue was laid off January 7, 1983.

In February 1983, Hogue had occasion to discuss the "Ironworker-Teamster dispute" with Juano. Juano informed Hogue that the Ironworkers refused to grant his request to "dovetail" seniority, "that he felt that it was unfair for me to have lost my job because of this clause in the contract and that he was proceeding to contact the International Ironworkers Union to try to get my job back." On or about the same day:

> In one conversation we were having, Mr. Juano informed me [Hogue] that he had been notified that we were going to go to Court in March and during the course of that conversation he informed Fred Long that he had better prepare himself, that if, meaning me, that if I won this hearing that he would have to transfer all of his forklift drivers to Teamster [sic] and Mr. Juano stated that as far as he was concerned the whole entire yard could be Teamster or Ironworker, it made him no difference as long as the one union controlled the whole yard.

## Analysis and Conclusions

The threshold issue is whether the three Teamsters employees were engaged in bargaining unit work after Respondent ceased its trucking operations. The appropriateness of the unit is not in issue. It is not alleged nor does the record show that the unit of Teamsters, as presently constituted, contravenes the provisions or purposes of the Act or well-settled Board policies. See *Otis Hospital*, 219 NLRB 164 (1975). See also *NLRB v. Chemetron Corp.*, 699 F.2d 148 (3d Cir. 1983). Respondent cites the following portion of *Classic Truck Rental Corp.*, 251 NLRB 443, 445–456 (1980):

> Thus, only if classifications of employees appear in the wage scale section of the agreement with specific wages assigned to such classifications would those classifications be included in the unit represented. If, on the other hand, certain classifications of employees happen to be mentioned in the preamble, and employees in said classification are, in fact, employed by the employer-party to the contract, but said employees are not assigned a wage scale, these employees are not in the unit, are not represented by the Union, and the Union claims no jurisdiction over them.

[6] Juano does not believe he set a deadline of May 3 to join the Ironworkers but admitted telling the Teamsters employees that they had to join the Ironworkers within 3 days or they would be terminated. Based on these admissions, inherent probabilities, and Hogue's demonstrated superior facility to recall these events, Hogue's version is credited.

[7] This failure has not been alleged to be a violation of the Act. The issue has not been fully and fairly tried.

As noted above, the local cartage agreement was included by reference in the National Master Freight Agreement (NMFA). The NMFA also provides, in article II, section II, that the supplemental agreements are limited to the specific classifications described therein. The local cartage agreement specifically includes forklift drivers in the wage scale portion. The other supplement mentioned in the title on the cover sheet of the NMFA, the Western States Area Over-The-Road Motor Freight Supplemental Agreement specifically excludes local dock work and city pickup and delivery service. Thus, it is found that the labor agreement with the Teamsters was meant to, and did, cover forklift drivers.

It is undisputed that the Teamsters members who operated forklifts were paid pursuant to the local cartage supplement. It is also undisputed that over the years Respondent specifically requested certain Teamsters unit members to perform forklift operations in the yard on a permanent basis as their full-time job and permitted these employees to continue their work inside the plant. The yard employees were supervised for many years by a teamster, Hogue, who also supervised members of the Ironworkers who were temporarily assigned to work in the yard. There is no assertion or showing that Hogue was a supervisor, as defined in the Act, when he worked as yard foreman. When he was yard foreman, Hogue still operated a forklift for at least 6 hours a day. The record shows that these Teamsters forklift drivers received wages and benefits consonant with the Teamsters agreement, including the local cartage supplement, and these wages and benefits were very different from those prescribed in the Ironworkers agreement.

Another indication of the fact that Teamsters forklift drivers were included in the Teamsters unit is that of teamster forklift drivers who left were replaced with other Teamsters members. For example, in 1979 Bourquin, who was working as a mechanic, was assisgned to replace a teamster forklift operator who left the Company's employ. A forklift driver, Hogue, was the Teamsters steward, which is another indication he was included in the unit. Respondent listed Hogue and Bourquin as lift-truck operators in the seniority list it provided the Union, indicating recognition that these employees and their classifications were properly within the unit. Also, Elliot testified, without refutation, that he gave evidence in the mid-1970's at an arbitration dealing with the replacement by a teamster of an ironworker forklift operator who was discharged, that the Teamsters unit included forklift operators. Thus it is clear that forklift operators were considered by Respondent to be included in the Teamsters unit. The Company dealt with Hogue as the steward, hence a representative of the unit. The inclusion of forklift drivers within the ambit of the agreement was not questioned until 1982, when the Company informed the Union it was withdrawing recognition. Respondent's claim that it was unaware of the local cartage supplemental agreement and, hence, the coverage of forklift operators, is found to be without merit. *El Centro Mental Health Center*, 266 NLRB 1 (1982).

The *Classic Truck Rental Corp.* decision, ibid., supports the finding that the collective-bargaining agreement with the Teamsters includes the forklift drivers. It is therefore unnecessary to reach the argument Respondent propounds regarding acquired jurisdictional rights based on the parties' historical relationship. Respondent cites *University of Chicago v. NLRB*, 514 F.2d 942 (1975), and *Boeing Co. v. NLRB*, 581 F.2d 793 (1978). Both these cases are found inapplicable to this proceeding. The *University of Chicago* case did not have the questioned class of employees included in the wage scale and the Board, in its decision therein, unlike this case, failed to present any evidence "that the University agreed to assign certain work to specific employees and recognize their union." Here, the employer engaged in all the acts described above indicating its agreement to assign work to teamster forklift operators. Also, unlike the *University of Chicago* case, the employer did not bargain in good faith to impasse about transferring the work out of the bargaining unit. *Boeing Co. v. NLRB* case, supra, deals with whether jurisdictional guarantees were granted in the contract. In the instant case, the issue is whether the members of the unit are properly within the unit and, thus, entitled to representation by their chosen representative. See *NLRB v. Ideal Laundry & Dry Cleaning Co.*, 300 F.2d 712, 717 (10th Cir. 1964). In fact, the *Boeing* decision, at page 96, recognizes, as was the case at Stockton Steel, that employees from different unions can perform the same functions.

### Withdrawal of Recognition

It is undisputed that, on January 25, Respondent notified Teamsters Local 439 of its "desire to cancel and terminate" the collective-bargaining agreement which was in effect to March 31, 1982. As found in *Abbey Medical/Abbey Rents*, 264 NLRB 969, 969 (1982):

> Such an "anticipatory withdrawal of recognition" in relation to a future contract is lawful if and only if the employer can demonstrate that, on the date of withdrawal and in a context free of unfair labor practices, the union in fact had lost its majority status [in the unit established by its collective-bargaining agreement],[8] or respondent's withdrawal was predicated on a reasonable doubt based on objective considerations of the union's majority status. *Terrell Machine Company*, 173 NLRB 1480 (1969); *James W. Whitfield d/b/a Cutten Supermarkets*, 22 NLRB 507, 508 (1975).

Under the facts presented in this case, on the date of withdrawal, the action was taken in a "context free of unfair labor practices." Ibid. Thus, the question is whether Respondent's withdrawal was predicated on a reasonable dount of the Union's majority status based on objective considerations.

A labor organization, as defined in the Act, whether voluntarily recognized by the employer or certified by the Board, enjoys the rebuttable presumption of majority status during and subsequent to expiration of a collective-bargaining agreement. See *Abbey Medical/Abbey Rents*, ibid, citing *Towne Plaza Hotel*, 258 NLRB 69

[8] *Litton Business Systems*, 205 NLRB 532 (1973); cf. *Lloyd McKee Motors*, 120 NLRB 1278 (1958).

(1981); *Petroleum Contractors, Inc.*, 250 NLRB 604, 607 (1980); *Saloon, Inc.*, 247 NLRB 1105 (1980), enfd. 647 F.2d 171 (9th Cir. 1981). The Respondent has the burden of rebutting this presumption by establishing it had a reasonable doubt as to the Union's continuing majority status or that the Union did not represent a majority. *Sahara-Tahoe Corp.*, 241 NLRB 106 (1979). Cf. *Landmark International Trucks*, 257 NLRB 1325 (1981).

There is no question that the three members of the Teamsters unit still sought representation by Teamsters Local 439, and so informed the Company's president Juano. There was no showing that on January 25, the date of the "withdrawal" letter, Respondent had any basis to question the Union's continuing majority status. However, assuming such a basis existed, the subsequent meeting between Juano and the Teamsters employees clearly dispelled any such doubt. Also, the record clearly establishes that, on the critical date, the Union in fact represented a majority of the unit. *Stoner Rubber Co.*, 123 NLRB 1440 (1959); cf. *Taft Broadcasting*, 201 NLRB 801 (1973). Thus, the question is whether the asserting party established that the labor organization does not, in fact, represent a majority of the bargaining unit employees. *Abbey Medical/Abbey Rents*, supra; cf. *NLRB v. Top Mfg. Co.*, 594 F.2d 223, 224 (9th Cir. 1979). The sole predicate for the Company's position is its elimination of its trucking operations; hence, "a renewal of their collective bargaining agreement will be an exercise in futility."

Since all the employees in the Teamsters unit were members of the Teamsters in good standing, which Respondent does not deny, it is found that the Company did not have a reasonably couched doubt of majority status based on objective considerations. The Company's claim of lack of knowledge of the supplements to the collective-bargaining agreement has been found to be without merit above and will not support, in any case, the Company's decision not to bargain with the Union over the terms and conditions of the Teamsters members' employment.

### Transfer of Employees

The next question is whether the fact that Respondent's actions resulted in the transfer of the Teamsters employees to the Ironworkers' bargaining unit in order to retain their employment altered its bargaining obligation. Respondent cites *University of Chicago v. NLRB*, 514 F.2d 942 (1975), for the proposition that it can reassign individuals from one unit to another without bargaining. The *University of Chicago* case held, 514 F.2d at 949:

> As we read the cases, *unless transfers are specifically prohibited by the bargaining agreement*, an employer is free to transfer work out of the bargaining unit if: (1) the employer complies with *Fibreboard Paper Products v. NLRB*, 379 U.S. 203, 85 S.Ct. 398, 13 L.Ed.2d 233 (1964), by bargaining in good faith to impasse; and (2) the employer is not motivated by antiunion animus, *Textile Workers v. Darlington Mfg. Co.*, 380 U.S. 263, 85 S.Ct. 994, 13 L.Ed.2d 827 (1965).

There was no bargaining to impasse; thus the *University of Chicago* rationale and its progeny are inapplicable. In this case, the decision to transfer the work and, hence the Teamsters employees, was predicated on Juano's decision to have just one union represent all of the Company's forklift operators. There was no bargaining on the issue.

While the Employer gave the Union advance notice of its desire to terminate the contract, there was no clear showing that the Union knew prior to the March 17 meeting that the Employer did not consider the Teamsters employees members of the unit. The Company's January letter states any bargaining would be a "futility." The only change the Company claims precipitated the decision to withdraw recognition was the cessation of trucking operations, which affected only one member of the unit who was given other work in the yard. This impact on one-third of the unit was not shown to raise an objectively couched good-faith doubt of majority support or otherwise justify the decision to withdraw recognition. There was no claim of right asserted that Respondent could transfer the employees to another unit. Hence, there was no bargaining over the decision, in violation of Section 8(a)(5) of the Act. There was no contention or showing that Respondent's decision to withdraw recognition was economically motivated. See generally *Los Angeles Marine Hardware*, 235 NLRB 720 (1978), enfd. 602 F.2d 1302 (9th Cir. 1979).

Respondent asserts that it was willing to bargain about the Teamsters. However, the evidence does not support this position. At the outset, in January, Respondent stated that such negotiations would be a "futility." On March 17, at the only negotiating session, Respondent's representative told the Union he would only bargain about the impact and implementation of Respondent's decision to terminate the trucking operation, not the terms and conditions of employment of the teamsters. In fact, Plummer's credited testimony, which is corroborated by LeBeouf, is that LeBeouf consistently took the position that there woud be no bargaining with the Teamsters for a new contract, that bargaining would be limited to the impact and implementation of the decision to terminate the trucking operations. The exchange of letters failed to indicate a willingness on the part of Respondent to bargain about the matter. In mid- or late April Juano informed the Teamsters employees that they had to join the Ironworkers or be fired. The decision to have all forklift operators represented by the Ironworkers was presented to the Teamsters as a "fait accompli." Juano admitted that the decision to withdraw recognition was made around December 1982. The invitation by LeBeouf to bargain about impact and implementation cannot be taken as a willingness to bargain about terms and conditions of employment. In these circumstances, there can be no finding that the Teamsters Union waived its rights to represent any of the employees. See *M. A. Harrison Mfg. Co.*, 253 NLRB 672 (1980); *Pinewood Care Center*, 242 NLRB 816 (1979); cf. *Taft Broadcasting*, 201 NLRB 801 (1973).

The sporadic communications by the Union for the few months between the negotiating session and the an-

nounced requirement that the Teamsters employees join the Ironworkers or be discharged is inadequate to raise a question of waiver, impasse, or abandonment, especially in this case where Respondent indicated an unwillingness to negotiate a contract despite the Teamsters' request to bargain and its assertion that it represented the unit. See *Cobb Theatres*, 260 NLRB 856 (1982). The Teamsters then filed an unfair labor practice charge against Respondent. This action further dispels any visions of abandonment or clear and unequivocal waiver of its right to continue bargaining about terms and conditions of employment of the unit members.

In these circumstances, it is concluded that Respondent's withdrawal of recognition in January 1983 and concomitant failure to bargain with the Union about the terms and conditions of the unit members' employment violates Section 8(a)(5) and (1) of the Act.

### Requiring Teamsters Employees to Join the Ironworkers

It is clear that Respondent required Hogue, Bourquin, and Gunkel to join the Ironworkers to retain their jobs, knowing it would result in their loss of seniority, for Juano tried to get the Ironworkers to "dovetail the seniority lists"and "waive their seniority clause." As a result of this action, Hogue, Bourquin, and Gunkel were among the first employees laid off. There was no showing that Respondent's actions were the result of antiunion motivation. Thus, the issue is whether the Employer violated Section 8(a)(3) and (1) of the Act when it terminated the terms and conditions of the Teamsters contract and required the Teamsters employees to join the Ironworkers. As the Court held in *NLRB v. Great Dane Trailers*, 388 U.S. 26 at 33 (1967), some conduct, however, is so "inherently destructive of employee interests that it may be deemed proscribed without need for proof of an underlying improper motive." The justifications advanced by Respondent for the decision were the elimination of the trucking operation and the demands of the Ironworkers.

As noted above, the elimination of the trucking operation did not eliminate the unit and/or the Company's obligations to the members of the unit. Although Respondent admittedly paid the teamsters more for the same work performed by the Ironworkers, Juano indicated this was not a basis for its decision. Juano testified the teamsters were very good employees and he did not mind paying them more money. Thus, without proof of adequate business justification, specific proof of antiunion motivation is not required and Respondent will be found to have taken action with potential long-term impact on the bargaining situation, which is an effort to undermine the Teamsters Union, in violation of Section 8(a)(3) and (1) of the Act. See *Cutten Supermarkets*, 220 NLRB 507 (1975); cf. *NLRB v. Great Dane Trailers*, supra, 288 U.S. 26 at 401.

### Jurisdictional Dispute

Respondent asserts that there was a jurisdictional dispute between the Ironworkers and Teamsters which should be resolved through the Board's 10(k) procedures, not unfair labor practice proceedings pursuant to Section 8(a)(5), (3), and (1) of the Act. There is no question that both unions claimed the forklift work in the yard. The issue, thus, is whether Respondent's actions were a consequence of a bona fide jurisdictional dispute.

The parties to this proceeding both rely on criteria set forth in *Brady-Hamilton Stevedore Co.*, 198 NLRB 197 (1972), which require a finding that the dispute be a bona fide, acute dispute in which a union uses unlawful means to fee the employer to assign the disputed work to their members. I find that Respondent's conduct was not a consequence of an acute, bona fide jurisdictional dispute. The record is devoid of any evidence of acuity. The Ironworkers and Teamsters are not shown to have engaged in any conduct violative of Section 8(b)(4)(D) of the Act. The longstanding claims of the respective unions never warranted the taking of action until Respondent determined to deal with one union only, after the trucking operations were terminated. Juano wanted only one union "controlling the yard." Accordingly, I find that Respondent violated Section 8(a)(5), (3), and (1) of the Act.

## CONCLUSIONS OF LAW

1. The Respondent, Stockton Steel Fabricators, Inc., a Division of the Herrick Corporation, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. General Teamsters Local No. 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Teamsters), is a labor organization within the meaning of Section 2(5) of the Act.

3. Western Steel Council and Shopmen's Local Union No. 790, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (Ironworkers) is a labor organization within the meaning of Section 2(5) of the Act.

4. The Teamsters unit, at all times material herein, included forklift operators and mechanics and was appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

5. At all times material herein, the Teamsters Union was the exclusive representative of the employees in the aforesaid appropriate unit, and Respondent, by withdrawing recognition from the Teamsters in January 1982, and by thereafter refusing to negotiate and bargain with the Teamsters about the terms and conditions of the unit members' employment, engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. By telling the employees who are members of the Teamsters that they had to join the Ironworkers as a condition of their continued employment with Respondent, resulting in loss of seniority, pension and welfare benefits, and reduction in pay as well as layoff due to loss of seniority, Respondent has violated Section 8(a)(3) and (1) of the Act.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

## THE REMEDY

In addition to directing Respondent to cease and desist from engaging in the several unfair labor practices found, the character and scope of those violations make appropriate a further order directing Respondent to refrain from infringing in any manner upon the rights guaranteed its employees under Section 7 of the Act.

Affirmative relief is also appropriate here. Accordingly, I shall direct Respondent to bargain collectively, on request, with the Teamsters Union as the exclusive bargaining representative of the employees in the unit found appropriate herein, and to embody any understanding reached in a signed agreement. The remedial order will also include the customary provisions relating to the posting of notices and related matters.

Also, having found Respondent violated Section 8(a)(3) and (1) of the Act, I shall recommend that Respondent reinstate the employees Donald Bourquin, Noel Hogue, and Owen Gunkel to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges and make them whole for any loss of earnings or benefits they may have suffered as a result of Respondent's actions. Backpay shall be computed according to the Board's policy set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950). Payroll and other records in possession of Respondent are to be made available to the Board, or its agents, to assist in such computation. Interest on backpay shall be computed in accordance with *Florida Steel Corp.*, 231 NLRB 651 (1977).[9]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

## ORDER

The Respondent, Stockton Steel Fabricators, Inc., a Division of the Herrick Corporation, Stockton, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from the Teamsters Union as representative of its unit employees.

(b) Failing and refusing to meet and bargain with the Teamsters Union regarding the terms and conditions of employmenet of its unit employees and, if agreement is reached, embody such agreement in a new contract.

(c) Removing employees from the Teamsters unit and requiring membership in the Ironworkers as a condition of continued employment, resulting in loss of seniority, pension and health and welfare, and other benefits and placing them on layoff as a consequence of this conduct and the resultant loss of seniority.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of tne Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act.

(a) Recognize and, on request, meet and bargain with the Teamsters Union concerning terms and conditions of employment of unit employees.

(b) Recall the employees laid off as a consequence of the above-mentioned unlawful decision and offer them reinstatement to the positions they held before their unlawful layoff or if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of contract wages and benefits during or after the contract's expiration, and continue to apply the contract's terms to its unit employees until such times as Respondent negotiates in good faith with the Union to a new agreement or to an impasse. These employees are to be made whole in the manner set forth above in the section entitled "The Remedy."

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Stockton, California copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[9] See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[11] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX A

### BARGAINING UNIT

Section 1. (A)

This agreement shall be applicable to all of the Company's production and maintenance employees (hereinafter referred to as "Employees") engaged in manufacturing, fabricating and handling of all materials entering into and/or used in connection with the manufacture or fabrication of all iron, steel, metal and other products, including pre-cast and pre-stessed concrete products, done by the Company in or about its plant or plants located in the San Francisco, California Bay Area and Vincinity thereof, including all maintenance work done in or about said plant or plants (except such maintenance work which is normally performed by members of other

unions), and to work done by such production and maintenance employees. The Company hereby recognizes and confirms the rights of its production and maintenance employees covered by this agreement to perform the work hereinabove described and, for the duration of this agreement, hereby assigns such work to said production and maintenance employes solely and to the exclusion of all other unions, crafts, employee groups and to the exclusion of all other employees of the Company not covered by this agreement.

Production and maintenance work shall not be performed by supervisors (excluding working foremen, leadmen, shop owners, and persons who perform research and engineering work) or other persons who are excluded from the bargaining unit, as set forth and described in this Section 1, except for the purpose of instructing the employees, or demonstrating proper methods and procedure of performing work operations, or in case of emergency. This agreement is not intended and shall not be construed to extend to office or clerical employees, draftsmen, engineering employees, watchmen, guards, or supervisors (excluding working foremen and leadmen), nor to erection, installation or construction work, nor to employees engaged in such work, nor to employees represented by other unions which are recognized by the Company and are the legitimate, exclusive bargaining representatives of such employees.

(B) "Maintenance employees" hereinabove referred to in this Section is intended to include employees of the Company engaged in the ordinary upkeep and repair of the Company's machinery, plant and property, provided, however, major extensions and major remodeling shall not be considered "maintenance" as that term is used herein.

## APPENDIX A2

ARTICLE 2.—Scope of Agreement—Section 1.-Master Agreement

The execution of this National Master Freight Agreement on the part of the Employer shall cover all operations of the Employer which are covered by this Agreement, and shall have application to the work performed within the classifications defined and set forth in the Agreements supplemental hereto.

Section 2.—Supplements to Master Agreement

(a) There are several segments of the trucking industry covered by this Agreement and for this reason Supplemental Agreements are provided for each of these specific types of work performed by the various classifications of employees controlled by this Master Agreement.

All such Supplemental Agreements are subject to and controlled by the terms of this Master Agreement and are sometimes referred to herein as "Supplemental Agreements."

All such Supplemental Agreements are to be clearly limited to the specific classifications of work as enumerated or described in each individual Supplement.

. . . .

(d) The jurisdiction covered by the National Master Freight Agreement and its various Supplements thereto includes, without limitation, stuffing, stripping, loading and discharging of cargo or containers to or from vessels except in those instances where such work is presently being performed. Existing practices, rules and understandings, between the Employer and the Union, with respect to this work shall continue except to the extent modified by mutual agreement.

. . . .

Section 3.—Non-Covered Units

This Agreement shall not be applicable to those operations of the Employer where the employees are covered by a collective bargaining agreement with a Union not signatory to this Agreement, or to those employees who have not designated a signatory Union as their collective bargaining agent.

. . . .

Additions to Operations-Over-The-Road and Local Cartage Supplemental Agreement

(b) Notwithstanding the foregoing paragraph, the provisions of the National Master Freight Agreement and the applicable over-the-road and local cartage Supplemental Agreements shall be applied, without evidence of Union representation of the employees involved, to all subsequent additions to, and extensions of, current operations which adjoin and are utilized as a part of such current operation, and newly established terminals and consolidations of terminals utilized as part of such current operation. . . .

Section 4.—Single Bargaining Unit

The employees, unions, employers and associations covered under this Master Agreement and the various Supplements thereto shall constitute one bargaining unit and contract. It is understood that the printing of this Master Agreement and the aforesaid Supplements in separate Agreements is for convenience only and is not intended to create separate bargaing units.

The Western States Area Over-The-Road Master Freight Supplement, by its terms, excludes local dock work and city pick-up and delivery service.

## APPENDIX

### NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

The Board determined that General Teamsters Local No. 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is the exclusive bargaining representative of Noel Gogue, Donald Bourquin and Owen Gunkel and now represents these employees. Accordingly, we give you the following assurances:

WE WILL NOT withdraw recognition from the Union as representative of these employees.

WE WILL NOT fail and refuse to meet and bargain with the Union regarding terms and conditions of employment of employees and, if an agreement is reached, will embody such agreement in a new contract.

WE WILL NOT require these employees to transfer to another union as a condition of employment without the consent of the Teamsters.

WE WILL NOT lay off Teamsters unit employees as a consequence of that decision.

WE WILL NOT in any like or related manner violate the terms of the National Labor Relations Act.

WE WILL recognize and, upon request, meet and bargain with the Union concerning terms and conditions of employment of employees in the Teamsters unit.

WE WILL recall Noel Hogue, Donald Bourquin and Owen Gunkel, who were laid off as a consequence of the unlawful decision to withdraw recognition, and offer them immediate reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights.

WE WILL make these employees whole for any failure to receive contract terms and conditions of employment because of our failure to honor the contract by appropriate payments to employees and contractual funds in amounts sufficient to match what would have been paid had employees worked under the contract's terms with appropriate interest thereon.

WE WILL continue to apply the contract's terms and conditions until we have negotiated in good faith with the Union to a new agreement or have reached an impasse in bargaining.

STOCKTON STEEL FABRICATORS, INC.